



Department of Justice  
Canada

Ministère de la Justice  
Canada

CCM#: 2016-007257  
Unclassified  
For Signature

## MEMORANDUM TO THE DEPUTY MINISTER

### Memorandum of Understanding (MOU) Between the Department of Justice and the Canadian Security Intelligence Service (CSIS) (FOR SIGNATURE)

#### SUMMARY

- To obtain your signature for the MOU pertaining to the provision of legal services to the Canadian Security Intelligence Service.
- **YOUR SIGNATURE IS REQUIRED**

#### BACKGROUND

The MOU follows the requirements set out by the Department and TB for purposes of cost recovery processes.

s.23

[Redacted]  
It is signed by the Director of CSIS and your signature will complete this process.

#### RECOMMENDATION

That you sign the MOU.

Attachment(s)  
MOU

**Prepared by:**

Danièle Turcotte, EA to Senior General Counsel, NSLAG (613-842-1400)  
Date: 6 April 2016

**Reviewed by:**

Mylène Bouzigon, Senior General Counsel, NSLAG (613-842-1197)  
Date: 6 April 2016

**Approved by:**

Elisabeth Eid, ADM, PSDI Portfolio (613-952-4774)  
Date: 6 April 2016

**Pages 2 to / à 22  
are withheld pursuant to section  
sont retenues en vertu de l'article**

**23**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**



Department of Justice  
Canada

Ministère de la Justice  
Canada

## Fiche d'approbation Approval Slip

À remplir par le secteur / To be completed by sector

DOSSIER/FILE # 2016-007744

Objet / Subject Correspondence - physician-assisted suicide/euthanasia

*DM Reply letter*

Préparée par /

Prepared by: Julie Besner, Counsel

Cote de sécurité /

Security level: Protected B

Personnel de soutien /

Administrative personnel: Amber Maloney

Numéro de téléphone /

Telephone number: 613-957-4739

Nombre de pièces jointes /

# of attachments: 1

Date limite à l'ULM /

Due at MLU: \_\_\_\_\_

Soumise pour approbation à

Sector approvals as required

Initiales

Initials

Année

Year

Mois

Month

Journée

Day

PHAEDRA GLUSHEK,

Directrice et AG. SPMDP – Director and GC. CLPS. Cabinet and Legislative Agenda

*A* 2016 04 26

CAROLE MORENCY,

DG et AGP. SPMDP - DG and SGC. CLPS

*JK* 16 04 24

DONALD K. PIRAGOFF, SADM

Équipe du SM / DM-Team

Approbation/signature/examen/du ministre demandé pour le :  
Minister's signature/approval/review requested by: \_\_\_\_\_

Remarques / remarks:

À remplir par l'ULM / To be completed by MLU

À la demande de /Requested by:/ Veuillez faire  
parvenir à :/Please forward to:

Revue interne / Seen by: \_\_\_\_\_  
Rédaction par/ Edited by: \_\_\_\_\_

Reçue / received: \_\_\_\_\_

Received in MLU: \_\_\_\_\_



Department of Justice  
Canada

Deputy Minister of Justice and  
Deputy Attorney General of Canada

Ottawa, Canada  
K1A 0H8

Ministère de la Justice  
Canada

Sous-ministre de la Justice et  
sous-procureur général du Canada

Protected B  
Our Reference #: 2016-007744

s.19(1)

Dear [REDACTED]

Thank you for your correspondence on physician-assisted suicide/euthanasia.

You may be aware that on April 14, 2016, the Minister of Justice and Attorney General of Canada, the Honourable Jody Wilson-Raybould, introduced Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, in the House of Commons. You can find the Bill on Parliament's website at parl.gc.ca and monitor its progress, including transcripts to all the debates and testimonies received by the Committees that will study the Bill.

I have forwarded a copy of your correspondence to the Minister of Justice for her information. As the Bill will be debated in Parliament in the days and weeks to come, you may wish to write to your Member of Parliament to share your thoughtful input with him and support the democratic process and inform the Parliamentary debate on this very important issue.

Yours sincerely,

William F. Pentney, Q.C.  
Deputy Minister of Justice and  
Deputy Attorney General of Canada

c.c.: The Honourable Jody Wilson-Raybould,  
Minister of Justice and Attorney General of Canada

Canada

2016-007744



Department of Justice  
Canada

Ministère de la Justice  
Canada

## Donald K. Piragoff

Senior Assistant Deputy Minister / Sous-ministre adjoint principal

Policy Sector / Secteur des politiques  
EMB / ECE 5195

Phone / Téléphone : (613) 957-4730

Fax / Télécopieur : (613) 957-9949

Email / Courriel : [donald.piragoff@justice.gc.ca](mailto:donald.piragoff@justice.gc.ca)

DATE :

22/04/16

TO / À :

Carole Morin

- |  |                                     |   |
|--|-------------------------------------|---|
| REQUEST BRIEFING NOTE  | <input type="checkbox"/>            | DEMANDE NOTE DE SYNTHÈSE  |
| YOUR RECOMMENDATION  | <input type="checkbox"/>            | VOTRE RECOMMANDATION  |
| ACTION AT YOUR DISCRETION                                    | <input type="checkbox"/>            | DONNER SUITE À VOTRE DISCRÉTION   |
| DRAFT RESPONSE FOR DM SIGNATURE                              | <input checked="" type="checkbox"/> | FAIRE UN PROJET DE RÉPONSE POUR LA SIGNATURE DU SM                                |
| DRAFT RESPONSE FOR SADM SIGNATURE                            | <input type="checkbox"/>            | FAIRE UN PROJET DE RÉPONSE POUR LA SIGNATURE DU SMAP                              |
| ACTION   | <input checked="" type="checkbox"/> | ACTION  |
| DIRECT REPLY WITH COPY TO SADMO                              | <input type="checkbox"/>            | POUR RÉPONSE ET COPIE AU BSMAP  |
| FOR REVISION (UPDATE)  | <input type="checkbox"/>            | POUR RÉVISION (MISE À JOUR)   |
| TO ATTEND IF INTERESTED<br>(PLEASE INFORM SADMO OF DECISION) | <input type="checkbox"/>            | PARTICIPATION SI VOUS ÊTES INTRÉRESSÉS<br>(S.V.P. AVISEZ LE BSMAP DE LA DÉCISION) |
| FOR CORRECTIONS  | <input type="checkbox"/>            | POUR CORRECTIONS  |
| FOR YOUR INFORMATION   | <input type="checkbox"/>            | À TITRE DE RENSEIGNEMENT  |
| YOUR COMMENTS  | <input type="checkbox"/>            | VOS COMMENTAIRES  |
| FOR DISCUSSION   | <input type="checkbox"/>            | À DISCUTER  |
| AS REQUESTED   | <input type="checkbox"/>            | EN RÉPONSE À VOTRE DEMANDE  |
| AS PER OUR CONVERSATION                                      | <input type="checkbox"/>            | SUITE À NOTRE ENTRETIEN   |
| FOR APPROVAL   | <input type="checkbox"/>            | POUR APPROBATION  |
| SIGN AND RETURN  | <input type="checkbox"/>            | SIGNER ET RETOURNER   |

DEADLINE / DATE LIMITE :

April 22, 2016

REMARKS / COMMENTAIRES :

*We need to provide a short reply  
(regarding report to the Bill and media material, etc), and  
Donald can sign for his signature right.*

ccmMercury Complete Record Information / Enregistrement complet

Printed / Imprimé

s.19(1)

2016-007744	Office / Bureau : DMO	Classification:
Type / Type :	Due Date / Date d'échéance :	Input Date / Date saisie : 2016-04-11
Format / Format :	Tone / Ton :	Doc Date / Date de doc :
Aut Cat / Cat auteur :	Language / Langage :	Assistant / Assistanl : *****
Subject / Sujet :	Cross-Ref / Référence :	

Synopsis / Résumé : (INCOMING) LETTER FROM [REDACTED] TO DM PENTNEY RE: PAS/EUTHANASIA

Signed Date / Date signée :	Closed Date / Fermé :	DMO File / Class. BSM :
Signed By / Signé par :	Out Format / Format sortant :	Operator / Opérateur : Olivia Truong

CC :	CC :	CC :	CC :
CC :	CC :	CC :	CC :

CONTACT(S) / CONTACT(S) :



E-mail / Courriel :

Tel # / # Tel :  
Cell # / # Cellulaire :  
Fax # / # Facsimilé :

Notes :

COMMENTS / COMMENTAIRES :

Details / Détails	Comment / Commentaire
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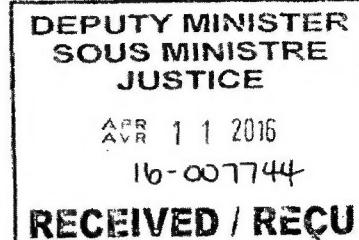
ROUTINGS / ACHEMINEMENTS:

Assigned To Assigné à	Task and Notes Tâche et Notes	Asgn Date Date assigné	BF Date Date de rappel	Returned Date Date de retour
DMO-BC	ACTION	2016-04-11		2016-04-12
DMO-CS	ACTION	2016-04-11		2016-04-12
PS-SADM	ACTION Copies have been delivered to A. Taschereau and C. Leclerc.	2016-04-12		

ATTACHMENT/ ANNEXES:

Description	Added By Ajouté par	Date & Time Date & Heure
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s.19(1)  
Mr. William F. Pentney,  
Deputy Minister,  
Ministry of Justice,  
284 Wellington Street  
Ottawa, Ontario  
K1A 0H8



Mar.28, 2016

Dear Mr.Pentney,

Re: PAS / euthanasia

After a long and unimpeded route the 'euthanasia movement' has arrived at Canada's House of Commons. This route has been paved by a willing and largely enthusiastic media coupled with institutional and professional failure on the part of many sectors of society including the Parliamentary Committee mandated to explore this issue which while named otherwise is, in fact, physician-assisted suicide [PAS] / euthanasia. You will find attached two documents which support this claim.

Like many areas where disagreement exists one can find the disagreement grounded not in conclusions but at the source. Intellectual honesty requires that one argues [debate] from principles to conclusions. Unfortunately in politics such integrity is sacrificed for expediency such that rhetoric replaces reason. You will this also explained in the attached material. The result is that one argues from conclusions.

At the source one finds the 'fault line', i.e. the divide, turns on what it means to be human. On the one hand there is a view which holds that « chaque personne, quelque soit leur circonstance de vie, porte la même valeur, la même dignité, et mérite le même respect. » This holds that all are of equal value and dignity. This is a view which crosses all boundaries throughout history. However, history also informs us of exceptions. On the other hand, the 'euthanasia movement' does not hold this view. In that construct value and dignity are dependent upon what one bestows on the other and therefore is external rather than inherent. Let it be said that history has examples where such views have held dominance and sway over nations.

As you and your Minister march toward June 6, you and she should be aware of which side of the divide you reside. Your children and your children's children will inherit whatever you enact.

Sincerely,

Enclosures: 2 3

**Pages 28 to / à 43  
are withheld pursuant to section  
sont retenues en vertu de l'article**

**19(1)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**



Department of Justice  
Canada

Ministère de la Justice  
Canada

CCM#: 2016-009445

Unclassified

For Decision

Action by/Deadline: 2016/05/02

## MEMORANDUM TO THE DEPUTY MINISTER

### Visual Identity (FOR DECISION)

#### SUMMARY

- To better reflect the Department of Justice's current environment, as well as the shift across government towards digital-first communications, it is timely to update the Department's current visual identity and guidelines, which were established in 2001.
- In April 2016, the Communications Branch gathered qualitative input on three proposed designs for a new visual identity. Focus groups representing a wide range of employees, and an online employee consultation via GCconnex were used to gather feedback.
- The input received from April 22-26 via the consultations indicates most preferred is Concept A; however, the final decision is yours.

#### BACKGROUND

To better reflect the Department of Justice's current environment, which incorporates a strong tradition with the Canada's Legal Team approach, the Department is updating its visual identity and guidelines for internal products.

The new visual identity will be featured on a wide range of internal communications platforms and tools—from intranet and presentation materials to infographics and social media content. The identity needs to speak to our tradition and our future as an innovative, modern Department while also supporting our shift from print to digital communications.

Since you were presented with the proposed concepts in early April (See Annex A) the Communications Branch has gathered feedback on the three concepts from focus groups and from an online employee consultation, with a view to launch the new visual identity during National Public Service Week, June 12 – 18, 2016.

Between April 13 and 26, the Communications Branch conducted focus testing with the following groups:

- NextGen
- A cross-section of members of Leadership Cohort 9
- EX03 Leadership Cohort
- Management Committee
- Innovation Council

Unclassified

- Virtual Communications Network
- Justice@150 History Project Review Board

An online consultation for all employees was held on GCconnex between April 22 and 26. In total, approximately 150 employees provided feedback. Additionally, the Justice Advisory Committee on Persons with Disabilities, provided comments on all elements of the proposed concepts.

Based on feedback received the preferred visual identity is **Concept A**. (please see Annex B for a summary of comments).

## KEY CONSIDERATIONS / OPTIONS

- It has been recommended that we pursue trademark protection for the maple leaf and scales identifier, should this be the chosen look.
- If you agree to launch the new identity during National Public Service Week (June 12 to 18, 2016), a final decision is required by **May 2, 2016** in order to produce all graphics and products.

## COMMUNICATION IMPLICATIONS

Communications Branch will promote the new visual identity via corporate communications channels (including JustInfo, JUSnet rotators, Infoscreens in the NCR, and JustMe messages).

We would appreciate a response by May 2, 2016, to facilitate the roll-out of the new visual identity during National Public Service Week.

**Prepared by:**

Michele Oberoi, Communications Advisor, Corporate and Internal Communications,

(613) 866-7081

Date: April 29, 2016

**Reviewed by:**

Dale Synnett-Caron, Manager, Corporate and Internal Communications, (613) 960-4890

Date: April 29, 2016

**Approved by:**

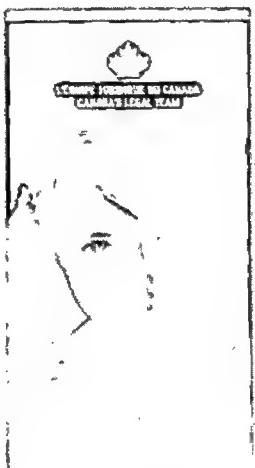
Tracie Nofle, Director General Communications Branch (613) 957-9596

Date: April 29, 2016

## ANNEX A

### VISUAL IDENTITY—THREE CONCEPTS

CONCEPT 1



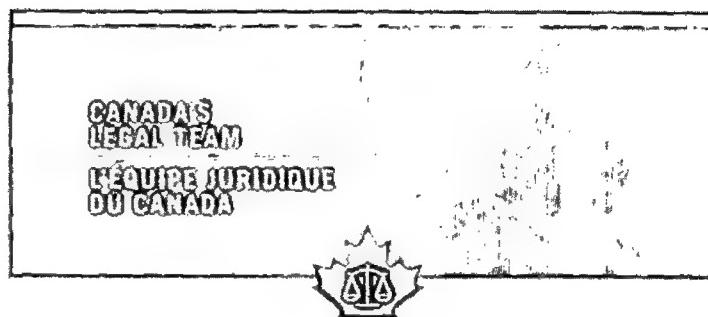
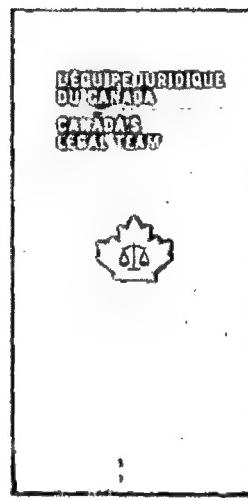
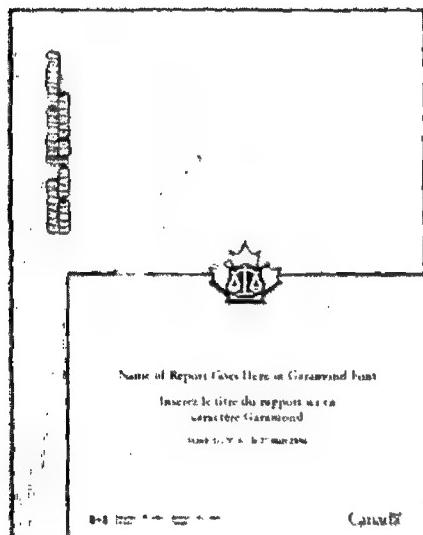
Public Service Employee Survey (PSES)  
Action Plan for 2014-17

Plan d'action relatif au sondage auprès des fonctionnaires  
fédéraux (SAFF) pour 2014-17

March 27, 2014 – to March 2018

Canada

• 200. 521 B



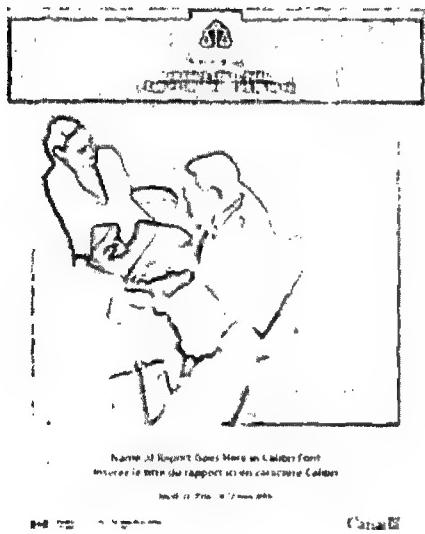
Public Service Employee Survey (PSES) Action Plan for 2014-17

## **Plan d'action relatif au Sondage auprès des fonctionnaires fédéraux (SAFF) pour 2014-17**

March 22, 2016 - le 22 mars 2016

Canadian

000047



**Public Service Employee Survey (PSES)**  
**Action Plan for 2014-17**

**Plan d'action relatif au Sondage auprès des fonctionnaires  
fédéraux (SAFF) pour 2014-17**

March 22, 2016 – le 22 mars 2016



Canadian

## ANNEX B

### VISUAL IDENTITY—FOCUS GROUP AND ONLINE CONSULTATION FEEDBACK SUMMARY

#### Focus group feedback

##### Concept A:

- People found Concept A to be modern, clean, professional, flexible, aesthetically pleasing and interesting. The scales watermark was popular, and seen as a good way to modernize the visual identity incrementally. People liked the logo (scales in maple leaf), finding it striking and memorable. The horizontal theme was also popular.

Some people thought the logo looked like the McDonald's logo. Others expressed concern about how Concept A would look when photocopied, or printed in black and white. There was concern about how the size of files if the image contained a watermark, as large files are difficult to share electronically.

##### Concept B:

- Some people liked the vertical bar in Concept B, calling it modern. As with Concept A, the logo (scales in maple leaf) was also popular. Some people liked the amount of gold, noting it softened the images presented

As with Concept A, some people thought the logo looked like McDonald's logo, or a sad face. Most people did not like the pinstripe background, calling it hard to read, disturbing to the eyes when seen on a monitor, and saying it made the page look busy and fuzzy. Some people did not like the yellow colour treatment imposed over the photo. One person said the vertical border would be affected by hole punches; another said the large gold area at the top of the image made it look like a "Wanted" poster. Like Concept A, people were concerned this concept's quality would be compromised when photocopied or printed in black and white.

##### Concept C:

- Concept C was the least favourite with the focus groups; however, many people did like the black box, calling the colour professional, and current, and noting that we do not need to have a maple leaf on everything.

Others did not like the black, calling it negative and dominant, and saying the scales

get lost in the box. The gold text against a green background was not popular as the text is difficult to read, will not work well digitally, and there will be accessibility issues for those who are visually impaired. As with Concept B, people did not like the pinstriped background, for the same reasons.

**General comments:**

- Colour scheme was discussed several times. Some people disliked the gold and green, indicating it was time for a change. Several people suggested a red and blue colour scheme, found in the Canada's Legal Team look, adding that these colours were new and clean. The majority supported keeping gold and green, noting the original meaning of the colours, and the comfort in tradition.

**Comments posted on GCconnex**

**Concept A:**

- This concept was seen as modern and easy to use, professional and clean, with good white space.

**Concept B:**

- Concept B was also seen as modern and professional.

**Concept C:**

- Concept C was not popular. Most people did not like the pinstripe background or the text font, and found the contrast between black and green affected readability.

**General comments:**

- General comments included comments about switching from green and gold, and a comment about the new designs too closely resembling the current visual identity, to a suggestion about ensuring the new design was accessible to those with visual impairment.

**Comments received via email and JustMe**

**Concept A:**

- Most of those who responded liked the logo (scale on maple leaf background); however some people thought it looked like a face. Several people commented on the use of serif font, noting that sans-serif is more accessible and easier to read.

**Concept B:**

- Again, most people liked the logo (scale on maple leaf background), although some thought it looked like a face. The PowerPoint template was very popular, and was seen as having visual impact. Respondents did not like the pinstripe background,

and commented that it looked like a printing error. The Garamond type was also highlighted as old-fashioned and hard to read.

**Concept C:**

- This was the least preferred concept, but those who liked it said its look was clean and modern, and that the scales look good against the black background. As with Concept B, the pinstripe background was not popular; people found it distracting, and one person said it resembled jail cell bars.

**General comments:**

- People had different opinions about the use of gold and green. While many people liked the traditional colours, others asked why we aren't switching to red and blue, found in the Canada's Legal Team materials.



Department of Justice  
Canada

Ministère de la Justice  
Canada

CCM#: 2016-007393  
Protected B  
For Approval  
Action by/Deadline: 2016/04/12

## MEMORANDUM TO THE DEPUTY MINISTER

### Statement of Potential Charter Impacts for the gender identity bill (FOR APPROVAL)

s.21(1)(a)  
s.21(1)(b)

#### SUMMARY

- This note seeks your approval of the content of the Statement of Potential Charter Impacts for the gender identity bill,
- A French and English version of the Statement are attached as Annex A.

#### DO YOU APPROVE?

#### BACKGROUND

The Statement (see Annex A) has been drafted pursuant to the pilot project to identify and publish the potential *Charter* impacts of Justice bills, which is intended to foster a more open and informed debate in Parliament and amongst the public.

It is the second Statement, the first having been a part of the explanatory paper for the medical assistance in dying bill. It is similar in style to the first, although differs significantly in approach in that it is not situated within a broader document intended to more fully explain and justify the policy choices made in the development of that bill. The approach used for the medical assistance in dying bill is considered to be exceptional, and appropriate in support of a bill that responds to a Supreme Court of Canada decision and deals with a very complex and challenging change in the criminal law, not to mention society more generally. The gender identity bill – although significant in its own right – calls for a more limited Statement.

There is as yet no confirmed date for the introduction of the gender identity bill.

#### KEY CONSIDERATIONS / OPTIONS

s.21(1)(a)  
s.21(1)(b)

## RESOURCE IMPLICATIONS

N/A

## COMMUNICATION IMPLICATIONS

The Statement would be posted on the Department's website once it has been tabled in the House of Commons.

## RECOMMENDATION

Attachment(s)

Annex A – Statement of Potential Charter Impacts / [redacted]

**Prepared by:**

Ray MacCallum, Senior Counsel, HRLS (613-941-9173)  
Date: April 7, 2016

**Reviewed by:**

Nancy Othmer, Director General and Senior General Counsel, HRLS (613-960-3420)  
Date:

**Approved by:**

Laurie Wright, Assistant Deputy Minister, PLLSS (613-941-7890)  
Date: April 11, 2016

## STATEMENT OF POTENTIAL *CHARTER* IMPACTS

### BILL C-\_\_\_\_\_

s.21(1)(a)

s.21(1)(b)

The following non-exhaustive list of potential impacts on the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* is presented to assist in informing public and Parliamentary debate:

#### 1. Freedom of expression: s. 2(b) of the *Charter*

Clause 3, which would amend the definition of “identifiable group” in s. 318(4) of the *Criminal Code* to include “gender identity or expression” for the purposes of the hate propaganda offences, limits s. 2(b) of the *Charter*, which protects freedom of expression. The proposed amendment would expand the scope of expression that would be criminalized by the *Code*’s hate propaganda offences, to include expressions of hatred toward an “identifiable group” on the basis of the group’s gender identity or expression. Hate speech is protected by s. 2(b) of the *Charter*, meaning that any limitation of it through criminal prohibition must be reasonable and demonstrably justified in a free and democratic society, as required by s. 1 of the *Charter*. Although the courts have held that freedom of expression includes the freedom to express hatred, even against vulnerable groups, such expression “falls far from the core values underlying s. 2(b)” and “does little to promote, and can in fact impede, the values underlying freedom of expression”.

*Potential justification:* The Supreme Court of Canada has upheld the prohibition against wilful promotion of hatred as a justifiable limitation of freedom of expression, in *R. v. Keegstra*. It is the Government’s position that the addition of “gender identity or expression” to the grounds on which hate propaganda is prohibited, would be a justifiable limitation of s. 2(b). Transgender and gender-\_\_\_\_\_ persons are vulnerable to discrimination, harassment and violence, and deserve society’s protection against expression that is particularly extreme and harmful. The limitation would be justified considering the narrow breadth of the expression that would be criminalized, the distance of such expression from the core values for which freedom of expression is constitutionally-guaranteed, and the vulnerability of the persons who would be protected by the amendment.

#### 2. The right to liberty: s. 7 of the *Charter*

Clause 3 could also impact s. 7 of the *Charter*, which protects against deprivations of life, liberty or security of the person that do not accord with the principles of fundamental justice. Individuals found guilty of hate propaganda offences could be punished with up to five years of imprisonment. A criminal prohibition that can be punished with a sentence of imprisonment deprives individuals of their right to liberty and so must respect the principles of fundamental justice.

It is a principle of fundamental justice that offence-creating provisions not be vague. This means that Parliament must use language sufficiently clear both to limit enforcement discretion on the part of police and prosecutors, and to provide fair notice to individuals as to what actions contravene the law. There may be questions whether the term "gender identity or expression" is unconstitutionally vague. The minimum standard that Parliament must satisfy to avoid unconstitutionally vague criminal prohibitions is a low one. The term "gender identity or expression" interpreted in the context of the hate propaganda prohibitions, provides sufficient guidance for legal debate and is not unconstitutionally vague. This is further supported by the increasing use of these terms in provincial human rights codes.

## PROJET DE LOI C-\_\_\_\_\_

s.21(1)(a)

s.21(1)(b)

### 1. Liberté d'expression : al. 2b) de la *Charte*

L'article 3, qui modifierait la définition de « groupe identifiable » figurant au par. 318(4) du *Code criminel* pour inclure « l'identité ou l'expression de genre » pour les infractions relatives à la propagande haineuse, limite l'al. 2b) de la *Charte*, qui protège la liberté d'expression. La modification proposée élargirait l'étendue de l'expression qui pourrait être criminalisée par les infractions relatives à la propagande haineuse du *Code* pour inclure les expressions de haine envers un « groupe identifiable » en raison de son identité ou expression de genre. Le propos haineux est protégé par l'al. 2b) de la *Charte*, en ce sens que toute restriction d'un tel propos au moyen d'une interdiction criminelle doit être raisonnable et doit avoir une justification qui puisse se démontrer dans le cadre d'une société libre et démocratique, comme l'exige l'art. 1 de la *Charte*. Bien que les tribunaux aient statué que la liberté d'expression inclut la liberté d'exprimer la haine, même contre des groupes vulnérables, une telle expression « s'écarte beaucoup des valeurs centrales de l'al. 2b) » et « contribue peu à promouvoir les valeurs sous-jacentes à la liberté d'expression », ce qui rend les restrictions au propos haineux plus faciles à justifier.

*Justification possible* : Dans *R. c. Keegstra*, la Cour suprême du Canada a confirmé que l'interdiction de fomenter volontairement la haine constituait une restriction justifiable de la liberté d'expression. Le gouvernement estime que l'ajout de « l'identité ou l'expression de genre » aux motifs pour lesquels la propagande haineuse est interdite constituerait une restriction justifiable de l'al. 2b). Les personnes transgenres ou à genre variable sont vulnérables à la discrimination, au harcèlement et à la violence, et méritent la protection de la société contre une expression qui est particulièrement extrême et préjudiciable. La restriction serait justifiée eu égard à l'étroite étendue de l'expression qui serait criminalisée, à la distance entre une telle expression et les valeurs fondamentales pour lesquelles la liberté d'expression est garantie par la Constitution, et à la vulnérabilité des personnes qui seraient protégées par la modification.

### 2. Le droit à la liberté : art. 7 de la *Charte*

L'article 3 pourrait aussi avoir une incidence sur l'art. 7 de la *Charte*, qui confère une protection contre les atteintes à la vie, à la liberté ou à la sécurité de la personne qui ne sont pas en conformité avec les principes de justice fondamentale. Les individus reconnus coupables d'infractions relatives à la propagande haineuse pourraient être

passibles d'un emprisonnement maximal de cinq ans. Une interdiction criminelle qui est possible d'une peine d'emprisonnement prive les individus concernés de leur droit à la liberté et doit donc respecter les principes de justice fondamentale.

Or, selon un principe de justice fondamentale, les dispositions qui créent des infractions ne doivent pas être imprécises. Le législateur doit donc utiliser un libellé suffisamment clair pour limiter le pouvoir discrétionnaire des policiers ou des procureurs dans l'application de la loi, mais aussi pour fournir un avis raisonnable aux individus en ce qui concerne les actions qui contreviennent à la loi. On peut se demander si le terme « identité ou expression du genre » est d'une imprécision inconstitutionnelle. La norme minimale à laquelle le législateur doit satisfaire est peu élevée à cet égard. Le terme « identité ou expression de genre », interprété dans le contexte des interdictions en matière de propagande haineuse, fournit des indications suffisantes pour orienter le débat juridique et n'est pas d'une imprécision inconstitutionnelle, comme tend à le confirmer également son emploi croissant dans les codes provinciaux des droits de la personne.

**Pages 58 to / à 70  
are withheld pursuant to section  
sont retenues en vertu de l'article**

**69(1)(g) re (a)**

**of the Access to Information Act  
de la Loi sur l'accès à l'information**